

*South Africa. Laws, statutes, etc.
" Wette . . .
Statutes . . .*



**STATUTES
OF
THE REPUBLIC OF SOUTH AFRICA
1969**

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**WETTE
VAN
DIE REPUBLIEK VAN SUID-AFRIKA
1969**

ALFABETIESE EN CHRONOLOGIESE INHOUDSOPGAWAWE

Act No. 25, 1969

SOUTH-WEST AFRICA AFFAIRS ACT, 1969.

ACT

To provide for the re-adjustment of administrative, legislative and financial matters relating to the territory of South-West Africa, including the amendment of the provisions of the South-West Africa Bantu Affairs Administration Act, 1954, the Exchequer and Audit Act, 1956, the Customs and Excise Act, 1964, and the South-West Africa Constitution Act, 1968.

(Afrikaans text signed by the State President.)
(Assented to 21st March, 1969.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Definitions.

1. In this Act, unless the context otherwise indicates—
 - (i) "Administrator" means the Administrator of the territory; (ii)
 - (ii) "Administration" means the Administration of the territory; (i)
 - (iii) "Constitution" means the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961); (vi)
 - (iv) "Department" means a department of State referred to in section 20 (1) of the Constitution; (iii)
 - (v) "law" includes a law as defined in The Interpretation of Laws Proclamation, 1920 (Proclamation No. 37 of 1920 of the territory); (viii)
 - (vi) "Legislative Assembly" means the Legislative Assembly of the territory; (ix)
 - (vii) "principal Act" means the South-West Africa Constitution Act, 1968 (Act No. 39 of 1968); (vii)
 - (viii) "scheduled matter" means a matter specified in the Schedule; (v)
 - (ix) "territory" means the territory of South-West Africa. (iv)

Amendment of section 4 of Act 56 of 1954, as amended by section 14 of Act 46 of 1962.

2. Section 4 of the South-West Africa Bantu Affairs Administration Act, 1954, is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) There shall be paid annually, out of the Consolidated Revenue Fund as a charge on the South-West Africa Account, into the Fund to the credit of such account, referred to in subsection (4), as the Minister may determine, such amount as Parliament may in any year appropriate for the purpose."

Repeal of section 6 of Act 56 of 1954.

3. Section 6 of the South-West Africa Bantu Affairs Administration Act, 1954, is hereby repealed.

Amendment of section 31 of Act 23 of 1956.

4. Section 31 of the Exchequer and Audit Act, 1956, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If at any time during the course of a month, it appears that the moneys in the Revenue Account or in the South-West Africa Account are likely to be insufficient

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to defray the authorized charges upon any such account, the Treasury shall prepare and submit to the Controller and Auditor-General a statement showing the amount of the estimated deficiency as at the end of that month and indicating the manner in which the deficiency is to be financed, and thereupon the Treasury may utilize any other moneys available in the Exchequer Account for the purpose of financing such a temporary deficiency.”.

Amendment of
section 35 of
Act 23 of 1956.

5. Section 35 of the Exchequer and Audit Act, 1956, is hereby amended—

(a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:

“(bA) the South-West Africa Account;”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) The Treasury shall also prepare in support of the Revenue Account and the South-West Africa Account detailed statements of the receipts during the financial year under the several headings shown in the annual estimates of revenue and of the issues from the Exchequer Account on account of each of the votes shown in any Appropriation Act for the year.”.

Repeal of section
104 of Act 91 of
1964.

6. Section 104 of the Customs and Excise Act, 1964, is hereby repealed.

Amendment of
section 1 of
Act 39 of 1968.

7. Section 1 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) In this Act and in any other law ‘Eastern Caprivi Zipfel’ means the territory known as the Eastern Caprivi Zipfel and described in the Eastern Caprivi Zipfel Administration Proclamation, 1939 (Proclamation No. 147 of 1939 of the Republic).”.

Repeal of section 3
of Act 39 of 1968.

8. Section 3 of the principal Act is hereby repealed.

Substitution of
section 5 of
Act 39 of 1968.

9. (1) The following section is hereby substituted for section 5 of the principal Act:

“Method of election of members of Executive Committee. 5. (1) Members of the Executive Committee shall be elected by majority vote, each voter having one non-transferable vote for every member of that committee to be elected.

(2) If two or more persons who at any election of members of the Executive Committee are candidates for the same seat, receive the same number of votes, a re-election of a member for that seat shall be held forthwith according to the principle of proportional representation according to which each voter has one transferable vote, and if at such re-election the said persons again receive the same number of votes, one of the said persons to be determined by the drawing of lots shall be deemed to have been elected as the member for that seat.

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(3) The State President may from time to time make regulations in regard to the election of members of the Executive Committee under this section, including regulations in regard to the duties of returning officers in connection with such elections and in regard to the drawing of lots under the circumstances contemplated in subsection (2), and such regulations shall have force and effect as if they were in this Act set forth."

(2) Subsection (1) shall come into operation on the date of the first general election of members of the Legislative Assembly following on the date fixed by the State President under section 25.

Amendment of
section 7 of
Act 39 of 1968.

10. Section 7 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Minutes of the proceedings of every meeting of the Executive Committee shall be kept, in which shall be recorded all decisions and the voting thereon."

Amendment of
section 12 of
Act 39 of 1968.

11. Section 12 of the principal Act is hereby amended by the insertion in subsection (2) (d) before the word "or" at the end thereof of the following proviso:

"Provided further that the following persons shall not be deemed to hold an office of profit under the Administration of the territory or the Government of the Republic for the purposes of this paragraph, namely, a member of any council, board, committee or similar body established by or under any law who receives no payment in respect of his services on such council, board, committee or body in excess of an allowance at a rate not exceeding eleven rand for each day on which he renders such services, together with the re-imbursement of any travelling expenses incurred by him in the course of such services."

Amendment of
section 13 of
Act 39 of 1968.

12. Section 13 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(a) If he resigns his seat in accordance with the provisions of section 175 of the Electoral Consolidation Act, 1946 (Act No. 46 of 1946), as applied by section 34 of the South-West Africa Affairs Amendment Act, 1949 (Act No. 23 of 1949); or"

Substitution of
section 19 of
Act 39 of 1968.

13. The following section is hereby substituted for section 19 of the principal Act:

"Payment of 19. A member of the Assembly (other than a member of the Executive Committee) shall be paid out of the revenue fund an allowance fixed by the State President."

Amendment of
section 22 of
Act 39 of 1968.

14. Section 22 (1) of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

"(a) Except in as far as it concerns Namas, Native affairs or any matters specially affecting Natives, including Native education, health services (other than preventive environmental services), veterinary services and matters relating to roads (except in relation to proclaimed roads) in Native areas and the imposition of taxation upon the persons, land, habitations or earnings of Natives;"

(b) by the substitution for paragraph (e) of the following paragraph:

"(e) the administration of justice, including matters relating to legal practitioners, commissioners of oaths, deceased estates, trust goods or moneys, funds under the control of officers of the court, curatorship, guardianship or the reciprocal execu-

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tion of maintenance orders, but excluding the imposition of punishment by fine or imprisonment for enforcing any ordinance of the territory made in relation to any matter in regard to which the Assembly may make ordinances;"

- (c) by the substitution for paragraph (f) of the following paragraph:

"(f) the administration, management and working of the postal, telegraph, telephone or radio services;"

- (d) by the addition of the following paragraphs:

"(l) the control of arms and ammunition;

(m) the prevention of cruelty to animals;

(n) matters relating to prisons or prisoners;

(o) water affairs;

(p) matters relating to the adoption of children, the welfare of children, juveniles, aged persons, war veterans, blind persons, physically or mentally disabled persons, indigent persons, maladjusted persons or alcoholics and to social welfare services and organizations;

(q) natural or historical monuments, relics or antiques, archives or state-aided libraries, museums, art galleries, zoological gardens or botanical gardens;

(r) mining and matters relating to minerals;

(s) matters relating to forestry, excluding nature conservation;

(t) matters relating to surveying or the registration of deeds;

(u) agricultural matters;

(v) matters specially affecting coloured persons (including Namas) and members of the Rehoboth Baster Community, including education for the said coloured persons and members, but excluding the entry into the territory of coloured persons;

(w) the promotion, incorporation, registration, management, administration, winding-up or dissolution of companies, co-operative societies, co-operative companies or other associations;

(x) trade marks, patents, designs and the use of emblems;

(y) weights and measures;

(z) the control of explosives;

(aa) the control of catching or capturing, marketing and export of, and the protection of and research in connection with sea fish, sea mammals and sea reptiles, including shellfish, crustaceans and other sea animals, and the control of fishing harbours, excluding the licensing of fishing boats;

(bb) the supply, control or maintenance of accommodation, transport or other facilities or of supplies for departments of State of the Republic;

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- (cc) the control of publications, cinematograph films or entertainments and measures dealing with undesirable publications, cinematograph films, entertainments or objects;
- (dd) matrimonial matters;
- (ee) matters relating to employees, employers, the use of machinery or safety or health precautions in trade or industries, including the agricultural or mining industry, and relating to artisans or factories;
- (ff) taxes on income (including undistributed profits, but excluding the income of persons other than companies and dividends to non-resident shareholders), stamp duties, marketable securities tax or transfer duty;
- (gg) matters relating to theft of stock or produce;
- (hh) matters relating to riotous assemblies and engendering feelings of hostility between the various racial groups;
- (ii) matters relating to immorality;
- (jj) the registration of births, marriages and deaths."

Amendment of
section 23 of
Act 39 of 1968.

15. Section 23 of the principal Act is hereby amended by the deletion of subsections (2) and (3).

Amendment of
section 31 of
Act 39 of 1968.

16. Section 31 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) There shall be a territory Revenue Fund into which shall be paid, subject to the provisions of the South-West Africa Affairs Act, 1969, all revenues raised or received in and for the territory."

Amendment of
section 38 of
Act 39 of 1968,
as amended by
section 18 of
Act 54 of 1968.

17. Section 38 of the principal Act is hereby amended by the substitution for subsections (1) and (5) of the following subsections:

"(1) The State President may by proclamation in the *Gazette* make laws for the territory in relation to any matter in regard to which the Assembly may not in terms of section 22 make ordinances.

(5) No Act of Parliament and no ordinance of the Assembly passed on or after the first day of November, 1951, shall apply in the Eastern Caprivi Zipfel, unless it is expressly declared so to apply."

Substitution of
section 40 of
Act 39 of 1968.

18. The following section is hereby substituted for section 40 of the principal Act:

"Application of Act. 40. This Act shall apply also in the Eastern Caprivi Zipfel."

Transfer of
administration
of affairs of
territory of
South-West
Africa relating
to certain
matters.

19. (1) Notwithstanding anything to the contrary in the Constitution, the principal Act or any other law contained, but subject to the provisions of this Act, the administration of the affairs of the territory relating to any scheduled matter shall be carried on by the Minister who under section 20 of the Constitution administers the Department under which such matter falls in the Republic, and such Department shall in relation to that matter be deemed to have been established also for the territory.

(2) Unless the State President by proclamation in the *Gazette* otherwise declares in any particular case, or unless it would in any particular case obviously be inappropriate, and subject

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to the provisions of the South-West Africa Bantu Affairs Administration Act, 1954 (Act No. 56 of 1954), for the purposes of any law in force in the territory at the commencement of this Act, in as far as it relates to any scheduled matter, any reference in such law—

- (a) to the Legislative Assembly shall be construed as a reference to Parliament;
- (b) to the Administrator shall be construed as a reference to the Minister who under subsection (1) carries on the administration in relation to the said matter;
- (c) to the Administration shall be construed as a reference to the Department under which such matter falls in the Republic;
- (d) to an officer of the Administration shall be construed as a reference to an officer holding a corresponding office in the said Department, or, if there is no such officer, any officer of any Department designated by the Minister administering the first-mentioned Department;
- (e) to the *Official Gazette* of the territory shall be construed as a reference to the *Gazette*;
- (f) to the Revenue Fund of the territory shall be construed as a reference to the Consolidated Revenue Fund.

(3) Unless the State President by proclamation in the *Gazette* otherwise provides in any particular case, and notwithstanding anything to the contrary in any law contained, the provisions—

- (a) of section 13 of the Interpretation Act, 1957 (Act No. 33 of 1957), shall apply in respect of regulations, rules or orders made under any law contemplated in subsection (2) of this section, which does not apply in the Republic;

- (b) of sections 15 and 16 of the said Interpretation Act shall apply with reference to any such law.

(4) Any body established or any person appointed or anything done before the commencement of this Act under any law contemplated in subsection (2), shall be deemed to have been established or appointed or done under that law as construed in accordance with the provisions of that subsection, and notwithstanding anything to the contrary in this Act contained, the conditions of service of any person so deemed to have been appointed shall not, by virtue of the application of this Act, be altered to his detriment unless he consents thereto.

(5) If the State President considers it to be necessary, he may for the purposes of this section and section 21 (1) from time to time determine, in such manner as he may deem fit, whether or not any particular subject falls under a scheduled matter or under which Department any particular matter falls or which or to what extent laws relate to a scheduled matter.

(6) In order to give effect to the provisions of this section—

- (a) the Administration may, by agreement between a Minister and the Administrator, on such conditions as may be specified in the agreement, place services, facilities or land at the disposal of a Department, whether for a consideration or not;
- (b) a Minister may by like agreement confer any power or impose any duty conferred or imposed by law upon him or an officer in his Department or any body attached to his Department, upon the Administrator or an officer of the Administration or any body attached to the Administration.

20. (1) If the State President considers it to be necessary for the proper administration of the affairs of the territory in terms of this Act, he may from time to time by proclamation in the *Gazette*—

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- (a) declare any provision of any law of the Republic, which in his opinion relates to a scheduled matter, to apply in the territory or in the territory excluding such portions thereof as may be specified in the proclamation, subject to such amendments, additions, modifications, exceptions or conditions as he may deem fit;
 - (b) repeal, amend or modify any provisions of any law in force in the territory in as far as in his opinion it relates to a scheduled matter;
 - (c) amend or modify any provision of any law of the territory relating to the expropriation of land or other property for public purposes.
- (2) Any proclamation issued under subsection (1) may contain such transitory clauses as the State President may deem fit.
- (3) The State President may from time to time by proclamation in the *Gazette* amend any proclamation issued under subsection (1) and, if he considers it to be necessary, declare any such amendment to be of retrospective effect.
- (4) Any proclamation issued under this section shall be laid on the Tables of the Senate and of the House of Assembly within fourteen days after promulgation thereof if Parliament is in ordinary session or if Parliament is not in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.
- (5) The foregoing provisions of this section shall cease to be of force and effect on the thirtieth day of June, 1971, but any proclamation issued under this section and in force immediately prior to the said date, shall remain in force as if the said provisions had not so ceased to be of force and effect.

Certain matters deemed to be scheduled matters for purposes of sections 19 and 20.

21. (1) Subject to the provisions of subsection (2), matters relating to the collection of revenues referred to in section 22 (2) (a) shall for the purposes of sections 19 and 20 be deemed to be scheduled matters.

(2) The application of the laws of the territory relating to taxes on the income of persons other than companies shall be in accordance with the general instructions of the Administrator-in-Executive-Committee.

Financial arrangements.

22. (1) There shall, subject to the provisions of this section, be paid into the Consolidated Revenue Fund to the credit of an account to be called the "South-West Africa Account"—

- (a) all revenue from the territory relating to scheduled matters;
- (b) all interest which may be received by the Minister of Finance from the Land and Agricultural Bank of South Africa on that portion of the capital of the former Land and Agricultural Bank of South-West Africa, which consists of Administration loans;
- (c) moneys appropriated by Parliament for the said account;
- (d) moneys accruing to the said account from any other source,

and the said account shall be credited annually with an amount calculated in accordance with a percentage, to be determined by the Minister of Finance in consultation with the Administrator-in-Executive-Committee, of the gross amount of revenue

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of the Republic under the provisions of the Customs and Excise Act, 1964 (Act No. 91 of 1964), after deduction of payments by the Government of the Republic under the provisions of section 51 (2) of that Act.

(2) There shall be paid into the Revenue Fund of the territory—

- (a) all revenue from the territory relating to matters in regard to which the Legislative Assembly may make ordinances;
- (b) annually from the Consolidated Revenue Fund, as a charge on the South-West Africa Account, an amount calculated according to the formula:

$$y = \frac{a - b}{c + a - b} \times d,$$

in which—

y represents the said amount;

a represents the average annual expenditure from the Revenue Fund of the territory during the five years immediately preceding the commencement of this Act, on matters referred to in paragraph (a) (including expenditure consisting of subsidies on petrol and diesel oil and remuneration of or pension contributions in respect of persons in the service of the Administration, but excluding the last-mentioned expenditure which would not have been incurred before the commencement of this Act if this Act had then been in force);

b represents the average annual revenue from the territory relating to matters referred to in paragraph (a), during the said five years;

c represents the average annual expenditure from the Revenue Fund of the territory on scheduled matters during the said five years (including expenditure consisting of contributions by the Administration to the Government of the Republic or the Railway Administration as interest or capital redemption or compensation for losses in terms of guarantee agreements, and including the annual contribution by the Administration in respect of police and weather bureau services, and also including expenditure incurred by the Administration in respect of customs and excise matters);

d represents revenue from the territory relating to scheduled matters (including the amount of land bank interest and customs and excise moneys with which the South-West Africa Account is credited in terms of subsection (1));

(c) annually from the Consolidated Revenue Fund, so much of the income tax collected in terms of any Act of Parliament in respect of the income of companies derived from sources within the territory other than mining, as may be prescribed in such Act.

(3) For the purposes of subsections (1) and (2)—

(a) "revenue" does not include revenue accruing to any body other than the State or the Administration; "scheduled matter" does not include any matter referred to in item 3 of the Schedule;

(b) revenue or expenditure concerning the Loan Account of the Administration shall not be taken into account.

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(4) There shall be paid into the Post Office Fund all revenue from the territory relating to matters referred to in item 3 of the Schedule, and notwithstanding anything to the contrary in any law contained, any moneys in that fund appropriated by Parliament for the service of the territory, shall be utilized for the administration of the affairs of the territory relating to the said matters.

(5) The State President may from time to time, after obtaining the views of the Administrator-in-Executive-Committee, direct that for the purposes of any provision of this section, particular revenue or expenditure or particular kinds of revenue or expenditure shall not or shall be taken into account, or shall not or shall be taken into account in accordance with such principles as he may determine, if any doubt should exist as to the application of any such provision.

(6) Notwithstanding the provisions of this Act or the Territorial Development and Reserve Fund Ordinance, 1944 (Ordinance No. 13 of 1944 of the territory), the moneys standing to the credit of the General Social Security Account, Land Settlement and Development Account, Government Buildings Account, Telecommunication Renewals and Development Account, Reserve Account, Native Areas Account, account Water: General Investigations, also Assistance and Sub-economic Loans to Municipalities and Capital Contingencies Account, referred to in the said Ordinance, shall be disposed of in such manner as the State President may determine, having due regard to the views of the Administrator-in-Executive-Committee.

Continuation of existing laws.

23. All laws of the territory in force at the commencement of this Act, shall, subject to the provisions of this Act, continue in force until repealed or amended by competent authority.

Application of Act.

24. This Act shall apply also in the Eastern Caprivi Zipfel.

Short title and date of commencement.

25. This Act shall be called the South-West Africa Affairs Act, 1969, and shall come into operation, subject to the provisions of section 9 (2), on a date to be fixed by the State President by proclamation in the *Gazette*.

Schedule.

MATTERS IN REGARD TO WHICH THE ADMINISTRATION OF THE AFFAIRS OF THE TERRITORY SHALL BE CARRIED ON BY A MINISTER OF THE REPUBLIC.

1. Except in as far as it concerns Namas, Native affairs or any matters specially affecting Natives, including Native education, health services (other than preventive environmental services), veterinary services and matters relating to roads (except in relation to proclaimed roads) in Native areas and the imposition of taxation upon the persons, land, habitations or earnings of Natives.

2. The administration of justice, including matters relating to legal practitioners, commissioners of oaths, deceased estates, trust goods or moneys, funds under the control of officers of the court, curatorship, guardianship or the reciprocal execution of maintenance orders, but excluding the imposition of punishment by fine or imprisonment for enforcing any ordinance of the territory made in relation to any matter in regard to which the Legislative Assembly may make ordinances;

3. The administration, management and working of the postal, telegraph, telephone or radio services.

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4. The control of arms and ammunition.
5. The prevention of cruelty to animals.
6. Matters relating to prisons or prisoners.
7. Water affairs.
8. Matters relating to the adoption of children, the welfare of children, juveniles, aged persons, war veterans, blind persons, physically or mentally disabled persons, indigent persons, maladjusted persons or alcoholics and to social welfare services and organizations.
9. Natural or historical monuments, relics or antiques, archives or state-aided libraries, museums, art galleries, zoological gardens or botanical gardens.
10. Mining and matters relating to minerals.
11. Matters relating to forestry, excluding nature conservation.
12. Matters relating to surveying or the registration of deeds.
13. Agricultural matters.
14. Matters specially affecting coloured persons (including Namas) and members of the Rehoboth Baster Community, including education for the said coloured persons and members, but excluding the entry into the territory of coloured persons.
15. The promotion, incorporation, registration, management, administration, winding-up or dissolution of companies, co-operative societies, co-operative companies or other associations.
16. Trade marks, patents, designs and the use of emblems.
17. Weights and measures.
18. The control of explosives.
19. The control of catching or capturing, marketing and export of, and the protection of and research in connection with sea fish, sea mammals and sea reptiles, including shellfish, crustaceans and other sea animals, and the control of fishing harbours, excluding the licensing of fishing boats.
20. The supply, control or maintenance of accommodation, transport or other facilities or of supplies for Departments.
21. The control of publications, cinematograph films or entertainments and measures dealing with undesirable publications, cinematograph films, entertainments or objects.
22. Matrimonial matters.
23. Matters relating to employees, employers, the use of machinery or safety or health precautions in trade or industries, including the agricultural or mining industry, and relating to artisans or factories.
24. Taxes on income (including undistributed profits, but excluding the income of persons other than companies and dividends to non-resident shareholders), stamp duties, marketable securities tax or transfer duty.
25. Matters relating to theft of stock or produce.
26. Matters relating to riotous assemblies and engendering feelings of hostility between the various racial groups.
27. Matters relating to immorality.
28. The registration of births, marriages and deaths.